

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 13-CR-20212-01
HONORABLE AVERN COHN

CRAIG CLAYTON,

Defendant.

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DEFENDANT CRAIG CLAYTON'S
SENTENCING MEMORANDUM

Defendant, CRAIG CLAYTON, by and through his attorney, Pamella R. Szydlak,
respectfully submits the following Sentencing Memorandum.

I. INTRODUCTION

On March 21, 2013, Mr. Clayton pled guilty to Count one of a one count Information, specifically, conspiracy to affect commerce by extortion, in violation of 18 U.S.C. Section 1951(a). The plea was tendered pursuant to a Rule 11 Plea Agreement.

The Probation Department prepared a Presentence Investigation Report calculating Mr. Clayton's advisory guideline range to be the same as set forth in the Rule 11 Plea Agreement, 18 to 24 months. As noted in the Presentence Investigation Report, it is expected that the government will file a 5K1.1 motion for downward departure, making Mr. Clayton eligible for probation.

II. DISCRETIONARY SENTENCING AND THE SENTENCING GUIDELINES AS APPLIED TO CRAIG CLAYTON

In *United States v Booker*, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), the United States Supreme Court made the Sentencing Guidelines advisory, not mandatory.¹ The Court severed and excised 18 U.S.C. Section 3553(b)(1), the provision requiring district courts to sentence within the range determined under the Guidelines. Under the remaining provisions of the Sentencing Reform Act, the district courts are required to consult the Guidelines, but same are not binding. *Id.*, Breyer op. at 16-17, 21-22. Accordingly, district courts must also consider the other factors listed in 18 U.S.C. Section 3553(a) and impose a discretionary sentence, within statutory limits.²

¹ See also *United States v. Ranum*, 353 F. Supp 2d 984 (E.D. Wis. 2005).

² See *United States v. Webb*, 403 F.3d 373, 385, n. 8 (6th Cir. 2005).

The Supreme Court reaffirmed that the “overarching” goal of federal sentencing is to “impose a sentence sufficient, but not greater than necessary.” *Kimbrough v United States*, 128 S.Ct. 558, 570 (2007). In *Gall v United States*, 128 S.Ct. 586, 596-97 (2007), the Supreme Court reiterated that while the sentencing guidelines are a good starting point, they “are not the only consideration” and the district court “may not presume that the Guidelines range is reasonable.”

The *Gall* Court stated that the district court should “consider all of the Section 3553(a) factors to determine whether they support the sentence requested by the party.” *Id.* The district court enjoys discretion and is not required to set forth “extraordinary circumstances” to impose a sentence outside the sentencing guideline advisory range. *Id.*, at 595.

Section 3553(a) requires a court to fashion a sentence which is “sufficient, but not greater than necessary” achieve the goals of sentencing. One of those goals is to provide a defendant with rehabilitation. 18 U.S.C. Section 3553(a)(2)(D). “[I]mprisonment is not an appropriate means of promoting correction or rehabilitation.” 18 U.S.C. Section 3582(a).

In accordance with 18 U.S.C. 3553(a)(1) a court is required to consider “the history and circumstances of the defendant” and 18 U.S.C. Section 3661 provides that “no limitation shall be placed on the information concerning the background, character, and conduct of the defendant which a court may receive and consider for the purposes of imposing an appropriate sentence.”

Based on the foregoing, Mr. Clayton requests that this Honorable Court take into consideration the following when determining a reasonable sentence.

18 U.S.C. 3553 (a) Factors to be Considered in Imposing a Sentence:

(1) The nature and circumstances of the offense and the history and characteristics of the defendant:

(a) The Offense:

Mr. Clayton was a minor participant in this offense. Mr. Clayton stands before this Court as the result of his actions that occurred on one occasion.

(b) History and Characteristics of Mr. Clayton:

Mr. Clayton has been an outstanding citizen his entire life. He was a proud auxiliary police officer for the Highland Park Police Department. Mr. Clayton feels he has disgraced his entire family. His Father was a Police Commission in New Jersey. His brother is a police officer. His son is a police officer. Cousins are K-9 Unit officers. Law enforcement was and is an integral part of his family. He was proud to be a police officer and now has to live every day of his life with the disgrace and shame brought upon his family by his conduct.

Medically, Mr. Clayton currently suffers from high blood pressure and recently found out is borderline diabetic. The doctor is trying to avoid any medications for the diabetes by having Mr. Clayton make life style and eat habit changes. He does take medication for the high blood pressure and for migraine headaches. He is currently under regular medical care.

Mr. Clayton attends church regularly and attends an adult bible study group each week. He was chosen to become a Deacon at Runner for Christ Ministries. He has been attending classes for same and is expected to finish his studies a few months. The position of Deacon is an honor. Mr. Clayton was also chosen to help with a leadership program for children, mentoring children ranging in age from 12 to 15 years.

Mr. Clayton's involvement in this offense stemmed from sheer desperation. His expenses were up and no money coming in. He needed money to support his family. He was trapped. He did not know how to pay his bills. He was unable to buy Christmas presents for his children. He was destitute. Mr. Clayton's mother had recently passed away and he was trying to help his family raise the money necessary for a proper funeral.

Mr. Clayton was earning \$8.00 an hour from the City of Highland Park, no benefits. Eight (\$8.00) Dollars per hour, putting his life on the line every day for the citizens of Highland Park. In addition to working 40 to 48 hours a week, he was required to put in an additional 24 hours a month without pay. He did so without a complaint. Mr. Clayton was very proud to be an auxiliary police officer. He felt it was an admirable job and he was able to help so many people.

On numerous occasions Mr. Clayton tried to get approval to get certified as a police officer, but was turned down by the department. He had been accepted to Police Academy programs to obtain certification, but needed the department's approval. If he had been a certified officer, he would have been making only \$15.00 an hour. Mr. Clayton also worked part time jobs trying to earn money to pay his bills. Those positions were scarce and short lived essentially because of the economy.

Mr. Clayton often walked to work because he could not afford transportation. On one occasion, when his supervisor saw him walking to work, he told Mr. Clayton that it was too dangerous for him to be walking. His supervisor gave him a ride on that and on other occasions.

The people he worked with knew of his desperate financial situation. One of the officers in this case approached him and told him he could make \$1,500. That sounded like millions to

Mr. Clayton. Prior to the date of the offense, Mr. Clayton made a list, on the back of an envelope, of the items he would purchase with the money, Exhibit A. He was not going to spend the money on jewelry or a night out on the town; he was going to spend the money on meat, eggs, milk, dog food, and deodorant. Those are only a few of the items listed in Exhibit A. The list shows the desperate straits that Mr. Clayton found himself in at the time he was approached to participate in this offense.

He also included a few gifts on the list for his brother that had helped him out. After purchasing these daily necessities and paying his rent, Mr. Clayton planned to give the remainder of the money to his children. Exhibit A speaks volumes of his dire financial circumstances. It also provides this Court with insight into Mr. Clayton's circumstances that drove him to make a terrible decision.

Mr. Clayton is not excusing his conduct, but explaining to this Court why he made the awful decision to act as he did on January 23, 2013. His remorse is overwhelming and as a result, he has tried to assist the government to the best of his ability. In actuality, remorse is an understatement. Mr. Clayton suffered a nervous breakdown shortly after being arrested and was hospitalized at Kingswood. The mental anguish still haunts him and he is seeking treatment.

Throughout this ordeal and upheaval, Mr. Clayton has always been there for his family and friends. He has always been there to provide them with guidance, love and support. His family and friends are overwhelmed by even the thought that they may have to be without him for one day.

Mr. Clayton will obviously have to find a new career. He has to hang up his gun belt, but has made plans to pick up an electrician's belt. He was recently accepted at Henry Ford

Community College and hopes to start classes in the Fall for electrical construction. He has also obtained his chauffeur's license and has been actively seeking employment in that area. One company did extend an offer of employment to him by providing him with an information hiring packet, Trinity Transport, but they do not want to officially hire him until they hear the outcome of this case.

Exhibit B contains letters from family and friends. The common thread of those letters is that Mr. Clayton is a loving, caring, protective, proud father and man. He put others before himself. He was a dedicated officer that cared about the people of the community and went above and beyond to help the citizens.

Craig Clayton's life has been filled with much turmoil, but he is not a complainer. He does not blame other people. He has stood tall under terrible circumstances and accepted responsibility for his actions. He has struggled his entire adult life, but has remained an outstanding and exemplary citizen and man.

(2) The need for the sentence imposed—:

This subsection provides that the sentence shall reflect: "the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense"; "to afford adequate deterrence to criminal conduct"; to protect the public from further crimes of defendant"; and, "to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. Section 3553 (a)(2)(A)-(D).

While this is a serious offense for which Mr. Clayton has accepted responsibility, as previously stated, Mr. Clayton's involvement was a one time occurrence. Since his participation, he has spent the remainder of his time regretting his actions. His acceptance of responsibility,

remorse, substantial assistance, and his dedication to his family and community all support that he will not be a recidivist and a sentence of imprisonment is not necessary.

(3) The kinds of sentences available:

Based on the facts of the offense that specifically involved Mr. Clayton, his history and characteristics, this Honorable Court should seriously consider imposing a sentence of probation.

(4) The kinds of sentence and the sentencing range established:

Based on information and belief, the government will be filing a 5K1.1 motion and thus, probation would be an option and that deviation is warranted.

IV. CONCLUSION

Craig Clayton is most certainly deserving of a break. He stands before this Honorable Court a broken and crushed man because of one terribly wrong decision. The remainder of his life has been filled with hard work and dedication to his family and job. He is truly a genuine person that has accepted responsibility for his actions. A reasonable sentence that would be sufficient to punish and deter further criminal conduct is one of probation with conditions. This Honorable Court should sentence Craig Clayton based on the facts and circumstances set forth herein.

Respectfully Submitted,

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DATED: June 19, 2013

I hereby certify that on June 19, 2013, I electronically filed the foregoing paper with the clerk of the court using the ECF system which will send notification of such filing to the following: David.Gardey@usdoj.gov and all other attorneys of record.

S/Pamella R. Szydlak
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